HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. 1296 of 2003 (SS)

Ram Chandra Das versus Secretary Education & oth.

Approved for reporting.

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~~Not approved for reporting~~

Date of decision: 24.10.2003

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition No. 1296 of 2003 (SS)

Ram Chandra Das, Principal,
Purva Madhyamik Vidyalaya, Khatima
District Udham Singh Nagar ..... Petitioner

Versus

1. Secretary Education
2. Basis Shiksha Adhikari, Udham Singh Nagar
3. Assistant B.S.A. Udham Singh Nagar ..... Respondents

Sri S.S. Yadav, Advocate for the petitioner
Standing Counsel for respondent no.1 and
Sri H.M. Raturi for respondent nos.2 and 3.

Dated: October 24, 2003

Hon'ble Rajesh Tandon, J.

By the present Writ Petition, the petitioner has prayed for the issue of a writ order or direction in the nature of Certiorari quashing the impugned order of transfer dated 6.9.2003 Annexure-1 to the writ petition passed by respondent no. 1.

Brief facts giving rise to the present Writ Petition are that the petitioner is working as Principal, Purva Madhyamik Vidhyalaya Chandeli Vikas Kheshtra Khatima, District Udham Singh Nagar. The petitioner was transferred to Purva Madhyamik Vidhyalaya Mjhola, Udham Singh Nagar.

The grievance of the petitioner is that the transfer order is mala fide in nature because the respondents have forcibly passed the order of transfer of the petitioner and without any reason blamed him as a disobedient Head Master of the Institution. The result of the Institution is very excellent and the colleagues of the petitioner are very happy with the behaviour of the petitioner. The transfer order has been communicated in mid-session, therefore, it becomes very difficult for the petitioner to shift his entire family members at the transferred place. The petitioner has further stated that study of his children will also effected by the transfer order.

The transfer order has been passed in public interest therefore no interference is required under Article 226 of the Constitution of India.

The Apex Court in the case of Shilpi Bose and others Vs. State of Bihar and others AIR 1991 SC 532, has held that the Government servant holding a transferable post has no vested right at one place or the other. It has been further held that the transfer orders issued by the Competent Authority do not violate any of his legal rights. The observations of the Apex Court are quoted below:-

"In our opinion, the courts should not interfere with a transfer order which are made in public interest

and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from the one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the Department. If the courts continue to interfere with day to day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administration, which would not be conductive to public interest. The High Court over looked these aspects in interfering with the transfer orders."

The Apex Court has observed that the party should approach the higher authorities in the department. The petitioner has already made a representation which has been mentioned as annexure 3 of the

writ petition. Authorities concerned are directed to consider the representation of the petitioner in accordance with the observations made above.

The petitioner has made a representation to the higher authorities of the Department but no order has been passed on his representation.

So far the argument with regard to transfer order being mala fide one, suffice it to observe that liberty is given to the petitioner to place his representation before the authorities who shall decide the same according to law.

Consequently, the writ petition is disposed of with a direction that the respondents shall decide the representation of the petitioner within a period of one month from today in the light of the observations made aforesaid. The transfer order shall remain in abeyance till then.

In the light of the above observations, the writ petition is disposed of finally. There will be no order as to costs.

24.10.2003 **(Rajesh Tandon, J.)**
*Dhyani